IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

TEAMSTERS LOCAL 763, Respondent, v. PUBLIC EMPLOYMENT RELATIONS COMMISSION, Defendant, CITY OF MUKILTEO, Appellant.	)	No. 63108-0-I DIVISION ONE UNPUBLISHED OPINION FILED: June 28, 2010

Grosse, J. — Where parties have signed a letter of understanding settling a dispute over an employer's failure to increase its contributions to health insurance premiums, an action to determine whether the employer should have paid those premiums is moot. This is particularly true here where the parties have since negotiated two collective bargaining agreements containing identical language regarding health insurance premiums. The appeal is dismissed.

FACTS

Teamsters Local 763 (Union) represents a bargaining unit comprised of 22 law enforcement officers employed by the city of Mukilteo (City).[1] A dispute arose while the parties were still subject to a collective bargaining agreement (CBA) in effect from January 1, 2002 through December 31, 2004. Article 11.1

[1] The Union also represents two other City bargaining units: Public Works and Office-Technical.

of that agreement provided:

> Health Insurance – The Employer shall pay each month on behalf of each regular full-time employee those amounts necessary to provide medical, dental and vision coverage for such employee and his/her eligible dependents. The City's Health Insurance contribution increases shall be limited to a maximum increase of 11.0% above 2001 rates in 2002, 10% above 2002 rates in 2003 and 10% above 2003 rates in 2004. Any increases that exceed these amounts in 2002, 2003 and 2004 shall be paid by the employee via payroll deduction.

On November 29, 2004, the City's manager, Richard Leahy, notified the Union that it intended to apply the 2004 rates to its health insurance contributions in 2005 if an agreement was not reached. The Union and City bargained on December 1 and 14, 2004. On December 14, the parties agreed that they were at an impasse in their negotiations for a new collective bargaining agreement.

On December 17, the Union objected in writing to the City's plan to maintain the 2004 rate for its health insurance contributions. The Union demanded that the City either pay all future health costs in full or adopt the 10 percent formula used in 2004 to the 2005 rates. The Union filed a grievance and demanded bargaining on the issue. When the City began to deduct additional money from its employees' paychecks on December 20 to cover the increased 2005 costs, the Union filed a complaint with the Public Employment Relations Commission (PERC).

A hearing was held before a PERC examiner on December 8, 2005. On October 4, 2006, the examiner issued a decision finding that the City did not commit an unfair labor practice because it maintained the status quo when it

continued to contribute to the health insurance premiums at the 2004 rate. The hearing examiner concluded that the City had neither a duty to pay the full amount of health insurance costs in 2005, nor a duty to pay health insurance premiums at a rate 10 percent above the 2004 levels.

The Union filed an appeal to the commission, which upheld the hearing examiner's findings and conclusions that there was no unfair labor practice.

The Union appealed to the King County Superior Court, which reversed the PERC holding in February 2009. The City appeals the superior court's ruling.

At oral argument, the parties advised the court that a current CBA existed and a settlement regarding the health insurance premiums had been reached. We requested additional briefing from the parties specifically addressing why this matter was not now moot.

ANALYSIS

Subsequent information provided by the parties revealed that in January 2007, at the same time the union negotiated its first CBA since the impasse, the Union and City signed a letter of understanding that provided for a lump sum payment to reimburse the police officers for the increased medical insurance premiums paid from December 2004 through November 2006. This occurred despite previous adverse rulings against the Union in which the hearing examiner and PERC found that the City was only required to make the same contribution toward its employees' medical premiums as it did in 2004, when the

contract expired.

Neither subsequent CBA contains any language stating that the Union is seeking an unfair labor practice for its allegation that the City failed to maintain the status quo. But the Union contends it was part of the bargaining process and that a letter memorialized the Union's intention to seek a remedy to declare that the City committed an unfair labor practice and would be required to post a notice to that effect.

The Union cites Yakima Police Patrolmen's Association v. City of Yakima[2] to support its position that the matter here is not moot. However, Yakima is easily distinguished from the instant case. There, the employee had committed suicide and reinstatement was not possible. But the court noted that in granting reinstatement, the city had been ordered to pay back pay and benefits, both of which would be available to his estate. Thus, meaningful relief was possible. Here, any meaningful relief has already been bargained for by the employees. What they are in essence asking for is an advisory opinion on what the status quo is if and when the parties reach another impasse on this particular clause. This we will not do.

The Union's reliance on federal decisions regarding the National Labor Relations Act (NLRA) is likewise misplaced. In Hoffman Plastic Compounds, Inc. v. National Labor Relations Board (NLRB),[3] the Supreme Court determined that the Immigration Reform and Control Act barred the NLRB from awarding

[2] 153 Wn. App. 541, 222 P.3d 1217 (2009).
[3] 535 U.S. 137, 122 S. Ct. 1275, 152 L. Ed. 2d 271 (2002).

back pay to undocumented aliens who had been terminated because of their participation in organizing a union in violation of section 8 (a)(3) of the NLRA. Mootness was not an issue in that case. The Union quotes the concluding paragraph in Hoffman, but omits the salient fact that Hoffman was required to "cease and desist its NLRA violations and conspicuously post a notice detailing employees' rights" to organize without threat of termination. Likewise, the federal cases, some unpublished, that the Union cites to are distinguishable on their facts. In NLRB v. Can-Am Plumbing, Inc.,[4] the issue was whether the NLRB could enforce its decision to post a notice when the company had failed to do so. In NLRB v. Curwood, Inc.,[5] the company argued that it was not required to take any affirmative action beyond posting a notice. But the court noted that in addition to such posting the NLRB required the company to cease and desist from unfair labor practices including the offering of pension benefits to those not unionized, blaming the union for benefits not received and for otherwise penalizing employees in the exercise of their rights. Thus, the employer was subject to contempt penalties for failure to comply. Here, the parties agreed that the status quo was to be maintained while the parties were at an impasse on their CBA and agreed to a reimbursement to the members for the extra premiums. There is no meaningful remedy that this court can provide.

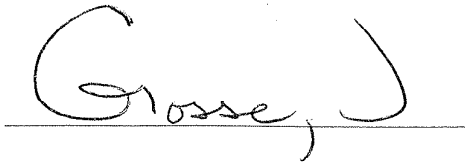
Alternatively, the Union argues that even if moot, the court should nonetheless review the trial court's decision as it presents issues of continuing

[4] 340 Fed. App'x 354 (9th Cir., 2009) (unpublished).
[5] 397 F.3d 548 (7th Cir., 2005).

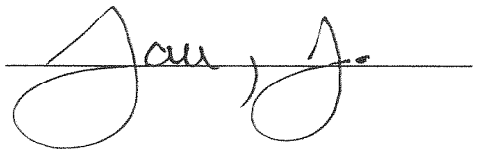
and substantial public interest that are likely to recur.[6] Matters of continuing and significant public interest may be considered in order to provide future guidance to lower courts.[7] But as stated above, this would in essence be an advisory opinion. These issues would only recur if the parties again reached an impasse and again could not decide what the status quo was regarding health insurance premiums. Furthermore, courts give deference to PERC decisions regarding interpretations of labor law and its applicability to scenarios. PERC has already issued an opinion establishing what that status quo is with regard to this case.

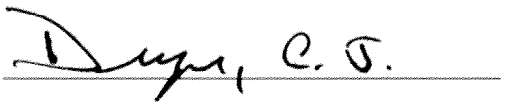
Finally, the parties will continue to execute collective bargaining agreements over the course of the years. We cannot tell whether the same clauses regarding health insurance premiums will recur.

The appeal is dismissed.



WE CONCUR:





[6] Satomi Owners Ass'n v. Satomi, LLC, 167 Wn.2d 781, 225 P.3d 213 (2009).
[7] State v. Billie, 132 Wn.2d 484, 488 n.1, 939 P.2d 691 (1997).